



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

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NO. 77-1430

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JEFFREY C. STRICKLAND, JOHN CHARLES McELVEY,  
KELLY FRANKLIN HARRIS, DIANNE YEOMANS and  
JOEL SMITH, JR., *Petitioners*

v.

THE STATE OF GEORGIA, *Respondent.*

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**PETITION FOR THE WRIT OF CERTIORARI  
TO THE GEORGIA COURT OF APPEALS**

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**BRIEF OF RESPONDENT**

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DISTRICT ATTORNEY  
SOUTHERN JUDICIAL CIRCUIT

BY: H. Lamar Cole and  
Alden W. Snead  
(Of Counsel—not admitted to practice in  
the Supreme Court of the United States)  
*Attorneys for Respondent*

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JEFFREY C. STRICKLAND, JOHN CHARLES  
McELVEY, KELLY FRANKLIN HARRIS, DIANNE  
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THE STATE OF GEORGIA,  
Respondent.

BRIEF OF RESPONDENT

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OPINION BELOW

State accepts Petitioners' statement  
of opinion below.

#### JURISDICTION

State accepts Petitioners' statement of jurisdiction.

#### QUESTION PRESENTED

State accepts Petitioners' statement of question presented.

#### CONSTITUTIONAL PROVISION INVOLVED

State accepts Petitioners' statement of Constitution issues.

#### STATEMENT OF THE CASE

State accepts Petitioners' statement of the case.

#### REASONS FOR DENYING WRIT

1.

The decision of the Georgia Court of Appeals is in accord with applicable

2.

decisions of the Supreme Court of the United States involving the retroactivity of cases and the exclusionary rule.

In Desist v U.S., 394 U.S. 244, 89 Supreme Court 1030, (1969), three guiding criteria are set forth by which a new case decision may be held retroactive. First, the purposes of the Connally holding and the exclusionary rule are remedial. No purpose can be achieved by their application to past conduct. Secondly, the Connally rule effects established criminal procedure relied on by law enforcement officials in good faith. No purpose of deterrence can be had by applying the Connally decision retroactively. Lastly, the

3.

Connally decision has no effect on "the fairness of trial". Therefore judicial integrity is not offended by denying retroactivity.

2.

There has been no refusal on the part of the Georgia Courts to equally apply the law. The following cases cited by the Petitioners decided two distinct issues. In State v Robinson, 142 Ga. App. 705, the court applied the Connally decision. In State v Patterson, 143 Ga. App. 225, the court refused to apply Connally retroactively.

4.

#### CONCLUSION

Because the Petitioners' cases were decided in accordance with applicable decisions of this Court, the Writ should be denied.

RESPECTFULLY SUBMITTED,

BY: H. Lamar Cole and  
Alden W. Snead  
(of counsel - not  
admitted to practice  
in the Supreme Court  
of the United States)  
Attorneys for Respondent

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5.

CERTIFICATE OF SERVICE

I, H. LAMAR COLE, Attorney of Record for the respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this day served a true and correct copy of the foregoing Brief for the Respondent in Opposition upon the petition by depositing a copy of same in the United States mail, with proper address and adequate postage thereon to:

SALIBA & NEWSOM  
George Saliba  
Post Office Box 1683  
Valdosta, Georgia 31601

This /5<sup>th</sup> day of June, 1978.

/s/ H. LAMAR COLE  
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H. LAMAR COLE